IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 14533 of 2007(E)

PETITIONER:

SAMUEL JACOB C., CORPORATE MANAGER,
MT & EA SCHOOLS CORPORATE MANAGEMENT,
S.C.S.CAMPUS, THIRUVALLA,PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:

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1. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM.

2. THE REGIONAL DEPUTY DIRECTOR OF
HIGHER SECONDARY HIGHER SECONDARY,
OFFICE OF THE REGIONAL DEPUTY DIRECTOR OF HIGHER
SECONDARY EDUCATION,EDAPPALLY,ERNAKULAM.

3. TENSE T.BABY, H.S.S.T.(CHEMISTRY),
ST.THOMAS H.S.S. KEEZHILLAM,
ERNAKULAM DISTRICT.

4. BEENA N.JOSEPH, H.S.S.T.(CHEMISTRY),
S.C.S.H.S.S.,THIRUVALLA,
PATHANAMTHITTA.

5. K.M.ELIZABETH,PRINCIPAL,
M.T.H.S.S., PATHANAMTHITTA.

6. GIGI MATHEW SKARIAH,
H.S.S.T (CHEMISTRY),
M.T.S.H.S.S.,KOTTAYAM.

BY GOVT. PLEADER SRI. A.J. VARGHESE
SRI.PRADEEP KRISHNA
SMT.T.RESMI DAMODARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 14533/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1. COPY OF THE NORMS FOR TRANSFER ISSUED BY THE MANAGEMENT

EXT. P2. COPY OF THE ORDER, G.O. DT. 11.2.05 ISSUED BY THE GOVT.

EXT. P3. COPY OF TRANSFER ORDER DT. 25.4.06 ISSUED BY THE MANAGER

EXT. P4. COPY OF PROMOTION & TRANSFER ORDER OF THE 5TH RESPONDENT DT. 25.4.06 ISSUED BY THE PETITIONER

EXT. P5. COPY OF JUDGMENT DT. 25TH AUGUST, 2006 IN W.P.C. NO.22732/06 OF THIS HON'BLE COURT

EXT. P6. COPY OF HEARING NOTE DT. 4.10.06 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT. P7. COPY OF ORDER DT. 31.10.06 ISSUED BY THE 1ST RESPONDENT

EXT. P8. COPY OF THE ORDER DT. 28.12.06 ISSUED BY THE PETITIONER

EXT. P9. COPY OF THE COMMUNICATION/ORDER DT. 15.2.07 ISSUED BY THE 2ND RESPONDENT

EXT. P10. COPY OF COMMUNICATION DT. 9.3.07 ALONG WITH THE STAFF LIST SENT BY THE PETITIONER TO THE 2ND RESPONDENT

EXT. P11. COPY OF COMMUNICATION/ORDER DT. 11.4.07 ISSUED BY THE 2ND RESPONDENT

EXT. P12. COPY OF THE APPLICATION FOR TRANSFER SUBMITTED BY THE 3RD RESPONDENT TO THE PETITIONER

EXT. P13. COPY OF THE MEMO DT. 21..5.07 ISSUED BY THE PETITIONER

EXT. P14. COPY OF THE ORDER DT. 21.5.07 ISSUED BY THE PETITIONER

RESPONDENT 'S EXHIBITS:

EXT. R3(a). COPY OF THE PHOTOGRAPH RECEIVING THE AWARD FROM HON'BLE MINISTER

EXT. R3(b). COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DT. 16.11. 2006

EXT. R3(c). COPY OF THE LETTER ADDRESSED TO THE MANAGER BY THE METROPOLITIAN

EXT. R3(d). COPY OF THE REPLY FROM THE MANAGER RECEIVED BY THE METROPOLITIAN

EXT. R3(e). COPY OF THE COMMUNICATION ISSUED BY THE MANAGER TO THE PETITIONER

EXT. R3(f). COPY OF THE COMMUNICATION ISSUED BY THE MANAGER TO THE PETITIONER

EXT. R4(a). COPY OF REPRESENTATION DT. 7.4.06 FILED BY THE 4TH RESPONDENT TO THE MANAGER

EXT. R4(b). COPY OF ORDER DT. 21.5.07 ISSUED BY THE MANAGER

EXT. R5(a). COPY OF ORDER DT. 20.5.06 ISSUED BY THE REGIONAL DEPUTY DIRECTOR

EXT. R5(b). COPY OF ORDER DT. 21.5.07 ISSUED BY THE MANAGER

EXT. R6(a). COPY OF THE REPRESENTATION DT. 22.5.04 SUBMITTED BY THE 6TH RESPONDENT TO THE MANAGER

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO.14533 OF 2007

Dated this the 7th day of August, 2007

J U D G M E N T

Petitioner is the Corporate Manager of Mar Thoma and Evangelical Association of Schools. He impugns Exts. P9 and P11 communications issued by respondent No.2, the Regional Deputy Director of Higher Secondary Education, Ernakulam, directing him to comply with Ext.P7 order issued by the Director of Higher Secondary Education. There is a further prayer to issue a writ of certiorari to quash Ext.P7 order of the Director "to the extent it enters a finding that there was documentary evidence to show that the manager had demanded money from respondent No.3"

2. The issue involved in this writ petition pertains to the transfer of respondent No.3, who is a Higher Secondary School Teacher working in one of the schools under the corporate management. It is not in dispute that respondent No.3 had been working in the school at Venmony in Alappuzha District from August 24, 2000 till June 30, 2005. He was transferred and posted in the school at Thiruvalla with

effect from July 1 2005. But by Ext.P3 order dated April 25, 2006 respondent No.3 was shifted from Thiruvalla to Keezhillam. He protested and approached the Director requesting for appropriate directions to the Corporate Agency.

3. According to respondent No.3 the impugned transfer was totally against the norms of transfer approved by the Agency. The matter was considered by the Director and Ext.P7 order was issued on October 31, 2006 with the following directions:

> *"After examining the case the Manager is hereby directed to show a humanitarian consideration to the teacher and reallocate transfer in accordance with the norms followed by the management without room for any complaint."*

4. It is contended by the petitioner/manager that he had considered the direction issued by the Director in Ext.P7 order and had forwarded Ext.P8 communication to him explaining the circumstances under which respondent No.3 was transferred from Thiruvalla to Keezhillam. In other words, the contention of the manager is that the explanation given by him in Ext.P8 is sufficient compliance of the direction issued by the Director in Ext.P7.

5. Admittedly, the manager had not challenged Ext.P7 before any

authority, though it was passed on October 31, 2006. Ext.P9 communication was issued by the Regional Deputy Director to the manager on February 15, 2007 directing him to explain why he had not complied with the directions issued by the Director in Ext.P7. Yet again Ext.P11 order was also issued by the Regional Director on April 11, 2007 directing the manager to comply with the orders of the Director. It is at this stage that the petitioner has preferred this writ petition with the prayers mentioned supra.

6. It is contended by the learned counsel for the petitioner that the corporate manager had considered the directions issued by the Director in Ext.P7 order in terms of the norms followed by the management in the matter of transfer. Respondent No.3 was shifted from Thiruvalla to Keezhillam since his transfer had become inevitable because of the transfers that had to be effected in respect of respondents 4 to 6.

7. Learned counsel points out that all these aspects had been made clear in Ext.P8 and therefore the Regional Deputy Director was not justified in issuing Exts. P9 and P11 directing the manager to

comply with the direction issued by the Director in Ext.P7 order. It is true that in Ext.P8, the manager has referred to Clause 6 of Ext.P1 norms of transfer which reads thus:

> *"Generally the teachers may be transferred from a school provided they have put in more than 5 years of service in that school. But this transfer will be made only if there are applicants for transfer to such schools ".*

It is contended by the manager that the terminology used in the above clause is "Generally". Therefore there is no interdiction against manager in effecting transfer of any teacher who has not put in more than 5 years of service in a school.

8. It is pertinent to note that Clause 4 of Ext.P1 stipulates that the transfer once made shall remain in force atleast for a period of 3 years, unless otherwise decided by the Management for specific reasons. It is contended by the manager that he had authority to decide otherwise, while ordering transfers in specific cases. The contention of the manager is that respondent No.4 who is an HSST in Chemistry had to be transferred from Pathanamthitta to Thiruvalla, when respondent No.5 who was working in Kottayam was promoted and posted as Principal at Pathanamthitta. The transfer of respondent No.4 from

Pathanamthitta to Thiruvalla was on compassionate grounds, the details of which according to the manager were furnished to the Director at the time of transferring her. It is also contended by the manager that respondent No.6, who is a native of Pandanad, had worked for about 8 years in Keezhillam. He was transferred to Kottayam "to rectify the anomaly in the transfer of teachers during the previous year." Significantly, the manager has not explained what was the anomaly that had crept in during the last year's transfer.

8. Anyhow, I do not propose to deal with the transfers referred to above any further, since obviously these were matters which were apparently brought to the notice of the Director at the time when he passed Ext.P7 order. It was presumably after considering all the above aspects that the Director had issued Ext.P7 order. As mentioned earlier, petitioner had not challenged Ext.P7 order before any authority. It is true that in this writ petition also, he has now sought quashing Ext.P7 order to the extent it has entered a "finding" that there was documentary evidence to show that the Manager had demanded money from respondent No.3. Even now the petitioner does not challenge the

direction issued by the Director to consider the request of respondent No.3 for transfer from Thiruvalla to Keezhillam in terms of Ext.P1 norms of transfer. A perusal of Ext.P1undoubtedly shows that the manager had not followed the norms of transfer. Respondent No.3 had worked at Venmony for 5 years. He was transferred to Thiruvalla with effect from July 1, 2005. He had completed hardly one year before he was shifted from Thiruvalla to Keezhillam. It is clearly against Clause 4 and 6 of Ext.P1. There is no proper explanation from the manager as to why respondent No.3 was shifted. Though a vain attempt has been made to explain the circumstances of transfer of respondent No.4 on compassionate grounds, as rightly pointed out by respondent No.3, this could have been achieved by giving transfer to respondent No.4 to Kottayam in the promotion vacancy of respondent No.5

9. As far as the challenge against Exts. P9 and P11 is concerned, it has to be noticed that those communications are only by way of reminding the petitioner to comply with the direction issued by the Director. Respondent No.2 being the subordinate authority, he had to ensure that the direction issued by the head of the Department had been

complied with by the manager. Having regard to the entire facts and circumstances, I have no hesitation to hold that petitioner is not entitled to get any relief in the writ petition.

Therefore the writ petition fails and it is accordingly dismissed.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007